

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHILADELPHIA INDEMNITY)
INSURANCE COMPANY, a)
Pennsylvania corporation, as)
subrogee of DH&G, LLC,)
Plaintiff,)
vs.) 2:19-cv-00138-RSM
HEWLETT-PACKARD COMPANY,)
Defendant.)

ZOOM VIDEO CONFERENCE DEPOSITION UPON ORAL EXAMINATION
OF
KEN RICE

ATTENDANCE OF ALL PARTICIPANTS VIA
ZOOM VIDEO CONFERENCE

9:02 a.m.
February 15, 2023

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REPORTED BY: Lauren G. Harty, RPR, CCR #2674

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A P P E A R A N C E S

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KEN RICE, witness herein, having been
 duly sworn by the Certified
 Court Reporter, testified
 upon oath as follows:

E X A M I N A T I O N

BY MR. BETKE:

Q. Mr. Rice, my name is Chris Betke, and I
 represent HP in this action and just going to go over
 a few of the ground rules here today so we're all
 operating under the same rules.

Couple things. First off, please answer all
 the questions with words like yes or no instead of
 head nods or hand gestures or things of that nature.
 That way we get a clear record. Okay?

A. Sure.

Q. If I remind you of that from time to time,
 I'm not trying to give you a hard time. Just want to
 make sure we get -- we get things clear.

If at any point in time you need to take a
 break to stretch, use the restroom, you know, grab a
 cup of coffee, anything like that, let me know. I'll
 be happy to accommodate you. We've worked well with
 Mr. MacMillan throughout this process, you know, doing
 our best collaboratively to get through what we have
 to get through. I would only ask that if -- if you

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E X A M I N A T I O N

ATTORNEY

BY MR. BETKE:

PAGE

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E X H I B I T I N D E X

EX#	DESCRIPTION	PAGE
1	12/18/2018 Jensen Hughes report.	10
2	8/16/2021 Jensen Hughes report.	11
3	Photograph 01 01 2016 08 40.	25

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have a question pending, that you answer the question
 as best you can before we take the break. Fair
 enough?

A. Okay. Sure. Sure.

Q. And if at any point in time you do not
 understand a question that I ask you, there's no way
 for me to know what's going on in your head unless you
 tell me. If you tell me that you don't understand, I
 can either explain it or rephrase it. Fair enough?

A. Fair enough.

Q. Okay.

All right. Please state your name for the
 record?

A. Name is Ken Rice.

Q. And where are you currently, Mr. Rice?

A. I'm currently in Pierce County.

Q. Is that in Washington?

A. Yes, it is.

Q. Okay.

And we're here today to talk about a fire
 that occurred at The Bluffs apartment. Are you aware
 of that matter?

A. Yes, I am.

Q. And specifically, the location of the
 apartment was at 2 West Casino Road, Everett,

2 (Pages 2 to 5)

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1 as Jensen Hughes, the assignment?

2 A. I believe he did give us the assignment.

3 Q. Yeah. If -- if -- I think if you look at
4 your report --

5 MR. BETKE: And why don't we -- why don't we
6 mark that as the first exhibit, Lauren, which is --
7 would be the Jensen Hughes report dated December 18,
8 2018.

9 Q. (By Mr. Betke) If you look at that, sir,
10 you'll see that it's addressed to Ryan Johannsen. So
11 is that consistent with your understanding that he
12 would have been the original person to assign this to
13 CASE?

14 A. Yes. At least our point of contact. I
15 don't -- you know, when -- when the -- when the
16 assignments came in quite often they would just have
17 us go out and --

18 Q. Yeah.

19 A. -- it could come in through different
20 avenues, but Ryan was the main point of contact.

21 Q. Okay.

22 How -- how many -- prior to the -- the date
23 of -- of the assignment here, which was within a few
24 days of -- of December 31, 2015, how many times had --
25 had Mr. Johannsen assigned work to CASE Forensics, to

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1 your knowledge?

2 A. I wouldn't -- I don't know.

3 Q. Had you ever worked with him previously?

4 A. I don't think so. There's a possibility,
5 but I didn't -- I don't remember that.

6 Q. Okay.

7 Now, we have a second report, and I will --
8 let's mark that as Exhibit No. 2, which is entitled
9 "BLUFFS AT EVERGREEN REBUTTAL REPORT," and that's
10 dated August 16, 2021. Do you have that handy, sir?

11 A. I don't have any of the reports in front of
12 me. I thought you would be able to furnish --

13 Q. Yeah.

14 A. -- them.

15 Q. Okay.

16 MR. BETKE: So, hey, John, can you forward
17 those to him, please?

18 MR. MACMILLAN: Yeah. I'll do that now.

19 Q. (By Mr. Betke) So if I were to say that
20 there were two reports, sir, one dated August -- I'm
21 sorry -- one dated December 18, 2018, and one dated
22 August 16, 2021, would that be consistent with your
23 recollection?

24 A. I believe so, yeah.

25 Q. All right. So why don't we give you a

Page 12

1 second to get those. All right?

2 A. I'm not sure how I'm going to get those, but
3 let's see what I can do.

4 Q. I think Ken is emailing -- I'm sorry -- John
5 is emailing them to you.

6 While we wait for you to receive those, why
7 don't I just ask you some questions and we'll -- you
8 know, we'll keep it moving. And then you can let us
9 know if they've come through. Okay?

10 A. Okay.

11 Q. Did you review your reports in preparation
12 for today?

13 A. I did.

14 Q. Okay.

15 So you had them at least for purposes of
16 reviewing them for today, correct?

17 A. Correct.

18 Q. Where are they now?

19 A. They'd be in my email, which I'm not able to
20 access right now for some reason.

21 Q. Okay. All right.

22 But you -- you weren't -- you're not
23 surprised that I'm planning to ask you about those
24 reports today --

25 A. No.

Page 13

1 Q. -- are you?

2 A. No. Not at all.

3 Q. Okay. All right.

4 The -- is it fair to say that when it comes
5 to in -- this matter when it comes to opinions about
6 the battery pack and the battery cells that you are
7 deferring to Mr. Eskra in that regard?

8 A. That is correct.

9 Q. And so you're not -- you're not purporting
10 to offer opinions -- scientific opinions about the
11 battery pack and battery cells, correct?

12 A. Correct.

13 Q. All right.

14 When you reviewed your reports in
15 preparation for today did you ascertain or discover
16 that you -- or learn that you had any opinions of
17 significance that were not included in those reports?

18 A. No.

19 Q. Okay.

20 Can you just state for the record what your
21 educational background is, sir?

22 A. High school graduate, community college.
23 Went through -- got my police officer certi --
24 certification at community college. And then outside
25 of that several sessions at the National Fire Academy.

4 (Pages 10 to 13)

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Page 19

1 A. Yes.

2 Q. Okay.

3 Now I'm going to just ask you about a couple
4 of aspects of NFPA 921 and just see if you agree or
5 disagree with the statements. Okay? Or -- or some
6 other answer I guess.

7 Do you agree that the investigation analysis
8 of any fire-related incident is a complex scientific
9 endeavor?

10 A. Would you ask that again?

11 Q. Yeah.

12 Do you agree that the investigation and
13 analysis of any fire-related incident is a complex
14 scientific endeavor.

15 A. No.

16 Q. Okay.

17 Do you believe that it's a scientific
18 endeavor?

19 A. Depends on the fire.

20 Q. Okay. All right.

21 And do you believe that one should employ
22 the scientific method when investigating a fire?

23 A. Yes.

24 Q. Do you agree with the following statement:
25 Determination of what patterns were produced at the

1 point of origin by the first item ignited usually
2 becomes more difficult as the size and duration of the
3 fire increases. This is especially true if the
4 compartment has achieved full room involvement?

5 A. Yes.

6 Q. In this particular fire at Oak Bluffs the
7 Davis bedroom achieved full room involvement, didn't
8 it?

9 A. Yes.

10 Q. And did it reach flashover?

11 A. Yes.

12 Q. All right. I'm going to read you another
13 statement and see -- ask if you agree with it. The
14 investigator should not assume that the fire at the
15 origin burned the longest and therefore fire patterns
16 showing the greatest damage must be at the area of
17 origin. Greater damage in one place than in another
18 may be the result of difference in thermal exposure
19 due to differences in fuel load, the location of the
20 fuel package in the compartment, increased
21 ventilation, or fire-fighting tactics. Agree?

22 A. Agree.

23 Q. And some of the things the investigator is
24 supposed to consider in making their origin
25 determination are as follows: Witness information

Page 20

Page 21

1 and/or electronic data, correct?

2 A. Correct.

3 Q. Fire patterns, correct?

4 A. Correct.

5 Q. And fire dynamics, correct?

6 A. Correct.

7 Q. Have you ever heard of a heat and flame
8 vector analysis technique?

9 A. I have.

10 Q. Is that discussed in NFPA 921?

11 A. Yes.

12 Q. Did you use -- did you do a heat and flame
13 vector diagram in this case?

14 A. I don't recall.

15 Q. All right. Have you gotten your reports
16 yet?

17 A. Let's see. The speed of light, right?

18 It says it's loading.

19 Q. All right.

20 All right. So why don't I -- I'll loop back
21 to that one and we'll just try to keep going as best
22 we can here.

23 A. I'm going to ask a question real quick. Do
24 you --

25 Q. Yeah.

1 A. -- want me to open the -- the original
2 report or the rebuttal?

3 Q. Well, what I was going to say to you --
4 I asked the question if you did a heat and flame
5 vector analysis diagram, and then what I was going to
6 ask you was if you wanted the opportunity to review
7 your report to determine -- because you said you
8 didn't know, so I'm going to give you a chance to
9 determine -- look at your report to tell me if you did
10 that.

11 A. Okay.

12 Q. You can look at either one as the case may
13 be. Probably the first one.

14 MR. BETKE: While he's doing that I'm just
15 going to go grab a quick cup of coffee, if that's
16 okay. I'm not going to -- be right back.
17 I'm back.

18 Q. (By Mr. Betke) Mr. Rice, have you had a
19 chance to look at that? And if you need more time,
20 just let me know.

21 THE WITNESS: Oh. I'm muted.

22 A. I looked through it. I don't see any
23 mention of a heat and vector analysis.

24 Q. (By Mr. Betke) Okay.

25 Is there any particular reason why you

6 (Pages 18 to 21)

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1 A. Well, to be exact, are you -- like an HP
2 notebook or just a, you know --

3 Q. A computer notebook, a computer notebook of
4 any sort. Have you -- let me -- let me make it easier
5 for you. Have you proffered any opinions -- meaning
6 written opinions. So maybe there's something that
7 didn't come to fruition for whatever reason. But have
8 you ever proffered a written opinion in any matter in
9 which you concluded that a notebook computer caused a
10 fire.

11 A. It's possible, but I don't recall.

12 Q. Okay.

13 And have you -- same question, except have
14 you ever testified in -- in a court or in a deposition
15 in a case where you opined that a notebook caused a
16 fire?

17 A. I'll have to give you the same answer. It's
18 possible, but I don't recall.

19 Q. All right.

20 So as you sit here today you can't recall
21 any instances where you testified or rendered opinions
22 that a notebook caused a fire. It's possible, but you
23 don't recall any, correct?

24 A. Correct.

25 Q. All right.

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1 Q. Other than that, can you tell me how long it
2 was?

3 A. I -- I would have to guess.

4 Q. Okay. All right.

5 So that's -- your best estimate is some
6 amount of time less than an hour, correct?

7 A. Correct.

8 Q. Did you record it?

9 A. No.

10 Q. Why not?

11 A. I never recorded interviews.

12 Q. Okay.

13 Did you have an iPhone at the time or some
14 sort of smart phone?

15 A. Correct, iPhone.

16 Q. Yeah.

17 So you could have recorded it on your
18 iPhone, but you elected not to because you don't do
19 that. Is that fair?

20 A. That's fair, yes.

21 Q. Okay.

22 And do you know where Lynn is today?

23 A. I believe she's deceased.

24 Q. All right.

25 And do you know when she died?

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1 Now, have you prepared any other written
2 reports in connection with this matter other than the
3 two that I -- that were passed along to you and that
4 you reviewed in preparation for your deposition?

5 A. No.

6 Q. Now, I know in Exhibit 1, which is the first
7 report, you reference an interview that you did with
8 Lynn. You -- do you re -- do you recall that?

9 A. Yes.

10 Q. All right.

11 If you'll look at page 5 of your report,
12 just so you know what I'm referring to, it
13 indicates --

14 MR. BETKE: Strike that.

15 Q. (By Mr. Betke) As you sit here today over
16 seven years later do you recall that interview?

17 A. Yes. I mean, not to a hundred percent
18 accuracy, but I do -- I do recall finding Lynn and
19 chatting with her, yes.

20 Q. Okay.

21 How long did that interview last?

22 A. I don't know.

23 Q. I mean, was it ten or 15 minutes? Five
24 minutes? An hour?

25 A. I would say it was less than an hour.

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1 A. I don't.

2 Q. Do you know how she died?

3 A. No.

4 Q. Do you know whether or not she died before
5 Philadelphia Indemnity filed a lawsuit in this case?

6 A. I don't.

7 Q. Did you have her sign a written statement in
8 connection with your interview of her in January of
9 2016?

10 A. I did not.

11 Q. So -- and did you make notes of your
12 conversation with her?

13 A. I did.

14 Q. And have you reviewed them in preparation
15 for today's deposition?

16 A. I did.

17 Q. Okay.

18 How many pages are those notes?

19 A. I'd have to go back and look because it was
20 notes -- and I'll -- when I start the fire
21 investigation I'll start at a -- at the top of the
22 page I'll write the information down about, you know,
23 the -- the client and the information --

24 Q. Yeah.

25 A. -- about the fire. And then I just go

9 (Pages 30 to 33)

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1 through and take notes as I proceed through the
2 investigation.

3 Q. Okay.

4 But when you looked at it in preparation for
5 today how long did it -- how long was the portion
6 related to Lynn? Was it pages? A single page? Part
7 of a page?

8 A. I'd say one to two pages.

9 Q. And -- you still have those, correct?

10 A. Correct. They're in my file.

11 Q. All right.

12 And aside from -- now, if you look at page 5
13 of your report, there's a bullet -- a bunch of bullet
14 points related to your interview with her. And is
15 there anything that you saw in preparation for today
16 in your notes that is of significance or would be of
17 import to this case that is not set forth in the
18 bullet points?

19 A. Not to my knowledge.

20 Q. Okay. All right.

21 Did you ever talk to the public
22 investigators in connection with this matter?

23 A. I did.

24 Q. Who did you speak to and when did you speak
25 to them?

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1 A. I can't tell you when. I talked to Steve
2 Goforth, who was the Assistant Fire Marshall for
3 Everett Fire Department.

4 Q. Okay.

5 And when did you speak -- you -- I'm sorry.
6 Did you say you can't say when?

7 A. Yeah. I don't -- I don't know exactly when
8 I spoke with him.

9 Q. All right.

10 I mean, was it like, you know, a couple of
11 days after the fire? Two years after the fire? That
12 kind of thing. At least can you give me an estimate?

13 A. There would have been several conversations.
14 The first one was probably the day that I got to the
15 scene and looked at the scene. And then, you know,
16 there's always subsequent, you know, just chat, call,
17 find out where they're at with it, that type of
18 conversation.

19 Q. Okay.

20 So did you -- when you -- the -- the first
21 conversation you talked to, was it pretty much about
22 getting access to the scene and general information
23 about the fire?

24 A. Yeah. There were several things. I wanted
25 to make sure the scene was released. We had heard it

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1 was. You always want to reach out to the public to
2 make sure that they're done.

3 The second was that the duplex receptacle
4 adjacent to the mattress had been removed, so I was
5 really concerned about where that went, why it left,
6 who took it, those types of things. So we got -- we
7 had a conversation about that, and he'd indicated it
8 was one of his investigators, Jim -- and I apologize.
9 I don't have the last name in front of me.

10 Q. Okay.

11 A. He had taken it for evidentiary value I
12 believe.

13 Q. Why -- why was it you were concerned about
14 that, like who took it and where it was, et cetera?

15 A. Well, it's not a common practice to liberate
16 those things until we have a joint exam. You know,
17 for any large loss we would leave that stuff in place.
18 If it's going to be secured and nobody can bother it,
19 not much of a reason to take it. So I -- I wanted to
20 know where it went, how it was taken, who took it,
21 where it went. Was it, you know, copper thieves that
22 came in in the middle of the night or what -- where
23 did it go. It's --

24 Q. Yeah.

25 A. -- important, right?

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1 So he had told me that his investigator had
2 removed it and it was in the custody of Everett PD.

3 Q. Okay.

4 What -- as -- can you recall any other parts
5 of the conversation?

6 A. You know, we talked about the -- the
7 interviews, you know, with Lynn. And that was
8 interesting because she seemed -- his opinion was
9 she was kind of all over the page and they weren't
10 really getting a whole picture of what happened.

11 Q. All right.

12 Did --

13 A. Other --

14 Q. -- you --

15 A. -- than that --

16 Q. Okay. Sorry.

17 You were going to say other than that,
18 that's all you can remember? Is that fair?

19 A. Yes.

20 Q. Okay.

21 And then in subsequent conversations did
22 you ever have, you know, substantive conversations
23 with the public investigators about their -- their
24 investigation versus your investigation or was it
25 merely to check in to find out what the status of

10 (Pages 34 to 37)

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1 THE WITNESS: Could I take a -- maybe a
2 two-minute break real quick?

3 MR. BETKE: Hundred percent.

4 THE WITNESS: All right.

5 MR. BETKE: Let's take a break. Thank you.

6 (Recess.)

7 (Marked Deposition Exhibit Nos. 1-3.)

8 MR. BETKE: All right. So back on the
9 record.

10 Q. (By Mr. Betke) You agree with me, sir, that
11 the degree of damage to an appliance is not an
12 adequate indication of origin.

13 A. Yes.

14 Q. Because -- that's true because an appliance
15 can be damaged itself in a fire. In -- in other
16 words, it can be significantly damaged as a result of
17 the fire as opposed to it causing the fire, correct?

18 A. Correct.

19 Q. And in -- more so in -- in a circumstance
20 where a product might have -- or an appliance might
21 have a fuel load in it like a battery pack in a
22 notebook computer, correct?

23 A. Correct.

24 Q. All right.

25 A. And I'll clarify my answer. There -- there

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1 has been -- and I've had several. One comes to mind.
2 I did have a freestanding PC and that was the only
3 fire, like right there. So --

4 Q. Yeah.

5 A. -- it wasn't attacked by the fire.

6 Q. Yeah.

7 A. I don't know how that came up.

8 So there is certain circumstances where I
9 could say that --

10 Q. You --

11 A. -- an appliance --

12 Q. You know, I was going to -- you know, I was
13 going to carve that out myself because -- yeah. I
14 mean, look. If a -- if -- I always tell the story if
15 I took a match and I threw it in this garbage can over
16 here and then I took -- put it out immediately and
17 then I asked you where was the area of origin, it'd be
18 pretty easy to say in that garbage can, right?

19 Because --

20 A. Right.

21 Q. -- the fire is constrained and, you know,
22 you'd have to be not too bright not to figure out that
23 it started there. You wouldn't have to be an expert.

24 But with a fire certainly of this magnitude
25 you would agree with me that you can't look at the

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1 damage at the appliance and conclude it caused the
2 fire. Is that fair?

3 A. That's fair.

4 MR. MACMILLAN: Object --

5 Q. (By Mr. Betke) All right.

6 MR. MACMILLAN: -- to the form.

7 And you can still answer, Ken. Sorry.

8 Q. (By Mr. Betke) Okay.

9 Now, did you observe electrical arcing in
10 Mr. Davis' room?

11 A. That would have been Sebastian that would
12 have looked for that.

13 Q. All right.

14 So is it fair to say that you did not play a
15 role in arc location or analysis? Is that correct?

16 A. Correct.

17 Q. And so you would defer -- whatever they
18 concluded, you used that and incorporated it, but that
19 was not part -- that was not your opinion. That was
20 their opinion. Is that fair?

21 A. Fair.

22 Q. Okay.

23 And so there was some -- there -- there was
24 reference in the reports about a lamp cord and it
25 having an arc and arc mapping. And is it fair to say

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1 you played no role in that?

2 A. Correct.

3 Q. All right.

4 Do you know whether arc mapping is treated
5 differently in NFPA 921 in the 2021 Edition versus the
6 2017 Edition?

7 A. I haven't reviewed it in depth, but my
8 understanding is there was going to be a movement of
9 it or it was going to be eliminated from 921.

10 Q. And is it -- you know, earlier I asked you
11 about the three things one considers in connection
12 with determining origin. They were witness statements
13 and electronic data, fire dynamics, and -- hang on one
14 second. You can help me out here if --

15 A. Fire --

16 Q. -- you want.

17 A. -- patterns.

18 Q. And fire patterns.

19 Isn't it fair to say that arc mapping used
20 to be in that section in 2017 and it's -- and it's
21 been crossed out? It's not part of that anymore.
22 It's not included in the thing -- things to consider.
23 Isn't that true?

24 A. That's correct.

25 Q. All right.

12 (Pages 42 to 45)

Page 62

1 Line 22, "MS. YEVROVICH: Yeah, and he -- he
2 never put -- he hardly ever put linens on his bed, but
3 they would be piled all over the place. I got the
4 impression he liked the piles of blankets and stuff
5 because he would hide some of his bottles there."

6 So -- first of all, let me ask you, is that
7 consistent with your recollection of what she said?

8 A. Yes.

9 Q. So I note that she started to say never,
10 but then she corrected herself and said hardly ever,
11 right?

12 A. Correct.

13 Q. And that suggests that there were times he
14 put linens on the bed, but probably mostly not, right?

15 A. Yes.

16 Q. Okay.

17 So can you state for the record your basis
18 for concluding that there were no linens on the bed at
19 the time of this fire.

20 A. Based on her statements.

21 Q. Okay.

22 And is that the statement I just read or
23 some other statement?

24 A. Just -- my interview with her.

25 Q. Okay.

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1 So is -- is the -- so the base -- the basis
2 that there were no linens on the bed at the time of
3 the fire is your interview with her in the parking lot
4 that's referenced in your report, correct?

5 A. Correct.

6 Q. All right.

7 And that's the interview that's not
8 recorded, right?

9 A. Correct.

10 Q. And really because she's passed away our
11 only source of what is or is not in that -- or what
12 she did or did not tell you is -- are your notes,
13 correct?

14 A. Correct.

15 Q. And regardless, it is true, isn't it, that
16 Mr. Davis would pile linens all over the place in that
17 room?

18 A. Yes.

19 Excuse me.

20 Q. And he had piles of blankets and stuff in
21 that room too, right?

22 A. Yes.

23 Q. And as I testified earlier, he kept it as
24 messy as he could. I'm sorry. "As I testified."
25 Nice try, Chris. As I asked earlier, he kept that

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1 room as messy as he could, right?

2 A. Yes.

3 Q. You would agree with me, sir, that piles of
4 linens and blankets are a competent ignition source,
5 aren't they?

6 A. No.

7 Q. You don't -- you don't believe that linens
8 and blankets can be set on fire?

9 A. Yeah, but I don't believe that they would be
10 the competent ignition source. The competent ignition
11 source would be something that would ignite them.

12 Q. Okay. Fair enough.

13 A. The first fuel --

14 Q. That's --

15 A. First fuel ignited, yes.

16 Q. All right. You're -- you're -- you're much
17 more -- well, this is why you're the expert and I'm
18 not, sir.

19 A. Oh, okay.

20 Q. You're much more precise than me and I --
21 you know, I got to own that. Okay.

22 So you're -- you would agree that linens and
23 blankets are a competent first material ignited for a
24 fire, correct?

25 A. Correct.

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1 Q. And so, you know, if Mr. Davis had a Zippo
2 lighter and he had piles of blankets and -- and linens
3 in his room, you're not disputing that he could have
4 lit those on fire with a Zippo lighter, are you?

5 A. Are you asking me if it's possible --

6 Q. Yes.

7 A. -- to --

8 Q. Yes.

9 A. -- to light --

10 Q. Yes.

11 A. -- blankets on fire with a lighter?

12 Q. Yes.

13 A. That is possible.

14 Q. Okay.

15 Now, I want to ask you about smoking in his
16 room. And how did you rule out smoking as a potential
17 cause of the fire?

18 A. Well, there was two things that I relied on;
19 is, one, that she had told me that he does not smoke
20 in his room. And then, two, we didn't -- we didn't
21 find any discarded smoking materials when we went
22 through the room and went through the debris.

23 Q. Okay.

24 And with respect to him -- his -- her saying
25 he didn't smoke in the room, it's fair to say that the

17 (Pages 62 to 65)

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1 only source where she says he did not smoke in the
2 room is her interview with you in the church parking
3 lot, correct?

4 A. Correct.

5 Q. And in fact, in the recorded police
6 interview she says a couple of different times that he
7 did smoke in the room, correct?

8 A. Correct.

9 Q. So in order for that part of your -- of your
10 opinion to stand we have to conclude that she told you
11 something different than what she told the Everett
12 Police Department, correct?

13 A. Correct.

14 Q. And you have elected to believe what she
15 told you in that parking lot versus what she told the
16 Everett Police Department, correct?

17 A. Correct, because I -- I did not find any
18 evidence of discarded smoking material in the room.

19 Q. All right.

20 Well, I'm going to get to that in a second.

21 A. Okay.

22 Q. There's two parts of what you said. The
23 first one -- I just -- I want to just focus in because
24 I want to get this clear. You said there were two
25 things. One, she told me he didn't smoke, right? And

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1 two, I didn't find any discarded smoking materials in
2 the room, right?

3 A. Correct.

4 Q. All right.

5 And so with respect to the first one, you
6 agreed with me that she told the Everett Police and
7 Fire Department that he did smoke in the room multiple
8 times, right?

9 A. Yes.

10 Q. All right.

11 In fact, I believe she said he had been
12 doing it for years in that room, didn't she?

13 A. Yes.

14 Q. Okay.

15 And so my point is with respect to item
16 number one, you elected to believe what she told you
17 in the parking lot as opposed to what she told the
18 Fire Department and the Police Department in the
19 recorded interview, correct?

20 A. Correct.

21 Q. All right.

22 MR. BETKE: Now, with respect to the finding
23 evidence of smoking materials in the room, can we put
24 up the -- I -- you had -- you had proffered some
25 exhibits, John, earlier this week, and I wouldn't mind

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1 if you -- if you could put them up for me, I'd be much
2 appreciat -- I'd appreciate it.

3 MR. MACMILLAN: Yeah. Hold on a second.
4 And so are you referring to the -- the two photos that
5 I talked about --

6 MR. BETKE: Yes.

7 MR. MACMILLAN: -- before?

8 MR. BETKE: Yes. Yes. Please, sir.

9 MR. MACMILLAN: So let me know if that takes
10 up too much of your screen.

11 MR. BETKE: No. That's good. That's good.

12 Q. (By Mr. Betke) Mr. Rice, are you familiar
13 with this photograph?

14 A. Oh. Let's see. I would have to say
15 vaguely. I'm sure it's from the scene.

16 Q. Yeah. Okay.

17 MR. BETKE: John, can you scroll down to the
18 second one?

19 MR. MACMILLAN: Yeah.

20 Q. (By Mr. Betke) All right. Do you see
21 here -- if you look -- I don't know -- almost the
22 center of this -- of the screen but a little higher up
23 there -- there -- there's a cigarette butt; is there
24 not?

25 A. There is.

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1 Q. And that's a cigarette -- that's a -- that's
2 a cigarette butt and it's of a cigarette that's been
3 smoked, correct?

4 A. It appears to be, yes.

5 Q. All right.

6 And how do you rule this cigarette butt
7 itself -- and I'm going to talk about cigarette butts
8 general -- you know, cigarettes generally, but how do
9 you rule this cigarette butt out as the cause of the
10 fire?

11 A. There's -- there's nothing burned around it.
12 Looks like it's on top of the carpet that was under
13 the -- maybe that's the base of the TV or a stand?

14 Q. Okay.

15 Well, is it your belief that that was there
16 prior to the fire or could it have been moved there in
17 suppression efforts or something else?

18 A. Could have been moved there during
19 suppression effort -- efforts.

20 Excuse me.

21 Q. It also could have been there prior to the
22 fire, correct?

23 A. Correct.

24 Q. Would you agree with me that if it was there
25 prior to the fire, that that's not really a good place

18 (Pages 66 to 69)

Page 70

1 to dispose of cigarette butts?

2 A. Yes.

3 Q. All right.

4 And that's indicative -- that's indicative
5 if it was there prior to the fire -- in other words,
6 if that cigarette butt was just left on the floor
7 either accidentally or intentionally, that that's
8 indicative of someone not properly taking care with
9 cigarette butts, correct?

10 A. Correct.

11 Q. All right.

12 And if you don't know whether that was there
13 before or after the fire, then we don't know whether
14 or not Mr. Davis took proper care with cigarette butts
15 prior to the fire in his room, correct?

16 A. Correct.

17 Q. Now, do -- did Ms. -- did Ms. -- no. Did
18 Lynn. I was going to -- I almost tried to say her
19 name, and that would have been a mistake.

20 Did Lynn tell you -- I'm sorry. Did Lynn
21 tell the Everett Police and Fire Department when
22 Mr. Davis would smoke in his room?

23 A. Are you asking like certain times or --

24 Q. Yeah. Yeah. What would precipitate it?

25 A. I don't know.

Page 71

1 Q. Okay.

2 Well, isn't it true that one of the things
3 she told them is he would do it when they fought?

4 A. Yes. I do remember that.

5 Q. Okay.

6 And you don't dispute that they had a fight
7 that day, do you?

8 A. No.

9 Q. No, you do not dispute it.

10 A. I do not dispute it.

11 Q. Okay.

12 And in -- in -- in addition Lynn told the
13 Everett Police in that recorded interview that she
14 smelled cigarette smoke coming from that room earlier
15 in that day, didn't she?

16 A. Yes.

17 Q. And she also told them that she be -- he
18 started smoking in that room two -- two or three years
19 before the fire and she couldn't make him stop.
20 Didn't she say that?

21 A. She did.

22 Q. And she wanted him -- and you reference in
23 your report -- and -- you reference in your report
24 that you didn't find -- like you found out on the
25 patio a can that had remnants of cigarettes, correct?

Page 72

1 A. Correct.

2 Q. And that was certainly a more -- more robust
3 amount of cigarettes than this one cigarette that you
4 found on the floor of his room, right?

5 A. Yes.

6 Q. Okay.

7 But isn't it true that -- both Lynn and Mark
8 smoked, correct?

9 A. Yes.

10 Q. And she was adamant about using the can out
11 on the porch, right?

12 A. Yes.

13 Q. And sometimes Mr. Davis would use the can on
14 the patio and sometimes he wouldn't, correct?

15 A. Correct.

16 Q. So at least with respect to the can out
17 there, it's not surprising that you would find more
18 cigarettes there because in essence you had two
19 smokers using that can to put out cigarettes at any
20 given time. Isn't that true?

21 A. True.

22 Q. And Lynn did not smoke in -- in the house at
23 all, period, next sentence, correct?

24 A. You know, I -- I can't say that with a
25 hundred percent accuracy, but that's what she alluded

Page 73

1 to.

2 Q. And -- she was pretty adamant about it when
3 she said that to the police, right?

4 A. She was.

5 Q. All right.

6 You have no reason to disbelieve her
7 statement, do you?

8 A. No.

9 Q. And in fact, her statement in the -- about
10 the -- her statement about the -- using the can on the
11 patio that she used it is consistent with what you
12 found out there, right?

13 A. Yes.

14 Q. Okay.

15 Now, did Lynn consider Mr. Davis a safe and
16 responsible person?

17 A. I don't believe so.

18 MR. BETKE: John, you can take down the --
19 oh, you got that --

20 THE WITNESS: You got it rotated.

21 MR. MACMILLAN: I did get it rotated. I was
22 going to --

23 MR. BETKE: All right. So let's -- is
24 this -- Lynn, is this -- I'm sorry. Lauren, is this
25 Exhibit 3?

19 (Pages 70 to 73)

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1 THE REPORTER: Yes.
2 Q. (By Mr. Betke) Just going back --
3 MR. BETKE: Thank you.
4 Q. (By Mr. Betke) Just going back to Exhibit 3
5 since we have it up here, and I'm not suggesting it
6 makes any difference, but in looking at it, does -- in
7 correct view of it does that help you identify that as
8 the Mark Davis room?
9 A. Yes.
10 Q. Okay.
11 So Exhibit 3 -- it -- and it looks to
12 have been taken on 1/1/2016 at 8:40. Is it your
13 understanding that this is a photograph that the Fire
14 Department took post fire?
15 A. Yes.
16 Q. Are you able to identify the notebook
17 computer in that?
18 A. No.
19 Q. All right. I -- I -- I didn't think so, but
20 I figured I'd ask. All right.
21 MR. BETKE: Thank you. You can -- you can
22 take that down, John. Thank you.
23 MR. MACMILLAN: Let me get out of here.
24 Okay.
25 Q. (By Mr. Betke) Now, Lynn told the -- the

Page 75

1 Police and the Fire Department detectives that she had
2 stopped accidents so many times in that house, right?
3 Or --
4 A. That --
5 Q. -- apartment.
6 A. -- she what? I'm sorry.
7 Q. That she had stopped so many accidents that
8 Mr. Davis was going to cause in that apartment,
9 correct?
10 A. Yes.
11 Q. And she described some dangerous
12 behaviors -- whether they're true or not certainly,
13 she -- she believed he engaged in dangerous behaviors,
14 including such things as turning on a gas grill
15 without the pilot light being on -- without the pilot
16 being on and then the smell of gas being everywhere,
17 right?
18 A. I do remember that.
19 Q. And you're -- as a -- as a police officer
20 and a fire investigator you're certainly not surprised
21 to hear that people who drink a lot of vodka on a
22 regular basis sometimes engage in either dumb or -- or
23 unsafe behaviors, correct?
24 A. Correct.
25 Q. All right.

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1 Now, you mentioned in the report about
2 fire-safe cigarettes. Now, you're not suggesting that
3 cigarettes can't cause fires, are you?
4 A. Pardon me?
5 Q. I said, you're not suggesting that
6 cigarettes can't cause fires, are you?
7 A. No.
8 Q. All right.
9 Plenty of fires are started by fire --
10 so-called fire-safe cigarettes. Isn't that true?
11 A. True.
12 Q. Thousands and thousands of fires are
13 attributed to cigarettes that are caused by fire-safe
14 cigarettes. Isn't that true?
15 A. True.
16 Q. All right.
17 Do you believe that what occurred on the day
18 of this fire between Lynn and Mark Davis was a
19 domestic violence situation?
20 MR. MACMILLAN: Object to the form of the
21 question.
22 And you can still answer, Ken.
23 A. I -- you know, I -- I can't -- I don't have
24 the answer whether it was a true domestic violence
25 situation because I don't -- the criminal laws of

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1 Washington -- I've not been a police officer here. I
2 was in Arizona. In Arizona it could have been a
3 disorderly conduct type, DV we would call, assign DV
4 to it, because they're in the same household. I just
5 don't know the -- the domestic violence laws and --
6 Q. (By Mr. Betke) Well --
7 A. -- how they apply in Washington.
8 Q. Well, you would certainly agree it was not a
9 kind, loving interrelationship, right?
10 A. Correct.
11 Q. The -- you ruled out an intentionally-set
12 fire here, right?
13 A. I did.
14 Q. Can you state for the record the basis for
15 ruling out an intentionally-set fire.
16 A. Just the totality of the interviews with
17 her. I didn't find any evidence of any type of
18 accelerant used. He was -- when she contacted him he
19 couldn't quite understand, but he was verbal in the
20 recordings. He left the unit. Just typically what we
21 see on intentionally-set fires, it just -- it -- it
22 just didn't make sense.
23 Q. Well, you already agreed with me that he
24 didn't need to use accelerants to start the fire,
25 right? Because you said a lighter and piles of linens

20 (Pages 74 to 77)

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1 and clothes could be a way a fire could start, right?

2 A. Correct.

3 Q. Okay.

4 So as far as it being an intentionally-set
5 fire, one way Mr. Davis could have done that is by
6 putting linens and clothing on the bed and lighting
7 them on fire, right?

8 A. Correct.

9 Q. And he had a lighter and he had those
10 materials, correct?

11 A. Correct.

12 Q. All right.

13 And -- then you said her -- the interviews.
14 And what interview -- what -- what is it about the
15 interviews that lead you to conclude that he didn't
16 intentionally set the fire?

17 A. She just never alluded to the fact that he
18 wanted to, you know, destroy anything that he had.

19 Q. Okay.

20 A. I mean, typically we look at means, motives,
21 and opportunity, correct? So he had the -- the -- the
22 means and the opportunity. I just couldn't come up
23 with a clear motive as to why he would want to destroy
24 his own -- little of what he had but let alone his
25 personal belongings.

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1 to take it out of the legal realm, would you agree
2 with me they had a pretty significant domestic dispute
3 that day? Right?

4 A. Yes.

5 Q. And she had told him that she wanted to see
6 other people, she was going to try to get a job as
7 fast as she could and move out when she could,
8 correct?

9 A. Correct.

10 Q. And what was his response to her?

11 A. I believe in my notes -- let's see. They
12 were in the living room watching TV and she told him
13 she wanted to leave him and end the relationship. He
14 told her, quote, "Fuck you," and went into his
15 bedroom.

16 Q. Yeah.

17 And in fact -- and in fact, she tes -- she
18 said in the -- in the police interview he yelled at
19 her, "Fuck you, fuck you, fuck you, fuck you, fuck
20 you, fuck you," right?

21 A. Yes.

22 Q. Six times at least, right?

23 A. Yes.

24 Q. And those were, according to her, the last
25 words he ever said to her, right?

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1 Q. When you say she didn't come up with it are
2 you referring to Lynn?

3 A. Lynn.

4 Q. And so did she not come up with a motive in
5 her police interview or in what she told you or both?

6 A. What she told me.

7 Q. Okay.

8 Do you believe in the police interview she
9 suggested a motive?

10 A. I do.

11 Q. Okay.

12 So in order for us to exclude the
13 motive part of the different means, motive, and
14 opportunity -- right? -- he had means and opportunity,
15 but he didn't have motive, to your understanding, we
16 have to accept what she told you in her -- in your
17 interview with her in the church parking lot and not
18 what she told the police. Is that fair?

19 A. Fair, yes.

20 Q. Okay.

21 Because she was pretty clear that in the
22 police -- when she talked to the police that she
23 believed he intentionally set this fire, right?

24 A. Correct.

25 Q. And in fact, they had a -- let's call it --

Page 81

1 A. Yes.

2 Q. Did she -- what did she say in the police
3 interview regarding what she believed his state of
4 mind was?

5 A. I don't recall that right off the top. She
6 may have mentioned that he was suicidal.

7 Q. Okay.

8 All right. I'm going to read you -- on
9 page 74 of her recorded interview it -- here's what it
10 says. Detective Atwood says, "And... these" -- "And
11 TV these days. Anyways, so what, what -- in your best
12 guess, what do you think his frame of mind was?"

13 "MS. YEVROVICH:" -- quote -- "She's leaving
14 me. I hate her. I don't want to live anymore. I'm
15 going to set this place on fire and burn up everything
16 she has, because, you know, she doesn't -- she's not
17 being with me and I feel like I paid for everything,
18 which isn't true. I had lots of stuff before I met
19 him.

20 And I'm just going to burn her place up so
21 that she doesn't have anything anymore and I'll just
22 die in the fire so they can't hold me responsible.
23 That's what I think he might have been thinking."

24 Is -- is what I read consistent with your
25 recollection of what she told the Everett Police and

21 (Pages 78 to 81)

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1 Fire Department?

2 A. Yes, but not what she told me.

3 Q. Okay.

4 And, again -- so in order to rule out the
5 intentionally-set fire and rule out the -- the motive,
6 as you pointed out, you'd have to conclude that what
7 she told you was correct and what she said here was
8 not correct, right?

9 MR. MACMILLAN: Object --

10 A. Yes.

11 MR. MACMILLAN: -- to the form.

12 Q. (By Mr. Betke) All right.

13 Now, are you -- are you familiar with
14 statements made in the -- I'm sorry.

15 MR. BETKE: Strike that.

16 Q. (By Mr. Betke) Are you familiar with in the
17 rebuttal report, which is Exhibit 2, there is a test
18 of a cigarette burn on the bed?

19 A. I didn't have anything to do with that. I
20 know that it's in there and I read it and saw that
21 they had done that, but I wasn't a part of that.

22 Q. All right.

23 So you can't -- you couldn't answer any
24 questions about that to me, correct?

25 A. No, I could not.

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1 (Deposition recessed at 10:37 a.m.)
2 (Signature reserved.)
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1 Q. All right.

2 And out of the -- all right.

3 MR. BETKE: Strike that.

4 So I have no further questions.

5 MR. MACMILLAN: I have no questions.

6 MR. BETKE: All right. Thank you.

7 THE REPORTER: Chris --

8 MR. BETKE: And, Lauren, I would like a copy
9 of the transcript.

10 MR. MACMILLAN: I would too, please.

11 THE REPORTER: Thank you.

12 MR. BETKE: And I would ask that you send
13 it -- if you want, I'll put it in the Chat, but you
14 can send it to cbetke@coughlinbetke.com.

15 THE REPORTER: I have that. Thank you.

16 MR. BETKE: Yeah. And then also could you
17 add -- also send a copy to docket, D-O-C-K-E-T,
18 @coughlinbetke.com; that's sort of a general
19 catch-all?

20 THE REPORTER: Okay.

21 MR. BETKE: All right. Thank you.

22 THE REPORTER: John, do you want the witness
23 to read and sign?

24 MR. MACMILLAN: I do, please, yeah.

25 MR. BETKE: All right. Thank you.

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SIGNATURE

1 I declare under penalty of perjury under the
2 laws of the State of Washington that I have read my
3 within deposition, and the same is true and accurate,
4 save and except for changes and/or corrections, if
5 any, as indicated by me on the CHANGE SHEET flyleaf
6 page hereof.

7 Signed in _____, Washington, this
8 _____ day of _____, 2023.

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14 KEN RICE

15 Taken: February 15, 2023
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24 Re: Philadelphia Indemnity v. HP
25 Cause No.: 2:19-cv-00138-RSM
Lauren G. Harty, RPR, CCR #2674

22 (Pages 82 to 85)